

By: Representative Mangold

To: Appropriations

HOUSE BILL NO. 1134

1 AN ACT TO AMEND SECTIONS 49-17-14, 49-17-16, 49-17-30 AND  
 2 49-17-32, MISSISSIPPI CODE OF 1972, TO REVISE THE AIR OPERATING  
 3 PERMIT PROGRAM FEE TRUST FUND; TO REVISE THE PURPOSES OF THE  
 4 ADVISORY COUNCIL; TO REVISE THE TITLE V FEE SYSTEM BY PROVIDING  
 5 THAT FUNDS ARE COLLECTED THROUGH AN EQUITABLE FEE SYSTEM FOR THE  
 6 TITLE V PROGRAM; TO PROVIDE THE COMMISSION ON ENVIRONMENTAL  
 7 QUALITY WITH CERTAIN AUTHORITY AND REQUIREMENTS REGARDING THE  
 8 SETTING OF FEES; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** Section 49-17-14, Mississippi Code of 1972, is  
 11 amended as follows:

12 49-17-14. (1) "Title V program" means, as used in Sections  
 13 49-17-1 through 49-17-45, the air operating permit program  
 14 mandated in Title V of the 1990 amendments to the federal Clean  
 15 Air Act, codified in 42 USCS Section 7661, et seq.

16 (2) There is created in the State Treasury a fund to be  
 17 designated as the "Air Operating Permit Program Fee Trust Fund,"  
 18 referred to hereinafter as the "fund."

19 (3) The fund shall be treated as a special trust fund.  
 20 Interest earned on the principal therein shall be credited by the  
 21 Treasurer to the fund.



22           (4) The fund may receive monies from any available public or  
23 private source including, but not limited to, collection of fees,  
24 interest, grants, taxes, public and private donations and judicial  
25 actions.

26           (5) To facilitate the proper administration of the fund, the  
27 commission is authorized to promulgate rules and regulations for  
28 the administration of the fund.

29           (6) The commission shall expend or utilize monies in the  
30 fund by an annual appropriation approved by the Legislature to pay  
31 all reasonable direct and indirect costs associated with the  
32 development and administration of the Title V program including,  
33 but not limited to, the reasonable costs of the following  
34 activities as they relate to the Title V program:

35                   (a) Preparing generally applicable regulations or  
36 guidance regarding the permit program or its implementation or  
37 enforcement;

38                   (b) Reviewing and acting on any application for a  
39 permit, permit modification or permit renewal, including the  
40 development of an applicable requirement as part of the processing  
41 of a permit, or permit modification or renewal;

42                   (c) Administering the permit program, including the  
43 supporting and tracking of permit applications, compliance  
44 certification, and related data entry;

45                   (d) Implementing and enforcing the terms of any Title V  
46 permit (not including any court costs or other costs associated



47 with an enforcement action), including adequate resources to  
48 determine which sources are subject to the program;

49 (e) Emissions and ambient monitoring;

50 (f) Modeling, analyses, or demonstrations;

51 (g) Preparing inventories and tracking emissions;

52 (h) Providing direct and indirect support to sources  
53 under the Small Business Stationary Source Technical and  
54 Environmental Compliance Assistance Program under Section 507 of  
55 the federal Clean Air Act in determining and meeting their  
56 obligations under this section; and

57 (i) Providing funding to the Advisory Council created  
58 in Section 49-17-16 in an amount reasonably sufficient to meet the  
59 Advisory Council's obligations under Sections 49-17-1 through  
60 49-17-45.

61 (7) Monies in the fund at the end of the fiscal year shall  
62 be retained in the fund for use in the next succeeding fiscal  
63 year. \* \* \* If the fund balance at the end of the fiscal year  
64 exceeds thirty-three percent (33%) of the projected annual costs  
65 of administering the program, the assessment rates may be adjusted  
66 to reduce the future projected fund balance. If necessary, the  
67 assessment rates shall be adjusted during the setting of the next  
68 fee schedule.

69 (8) At no time shall a fee be assessed that results in a  
70 projected ending fund balance of more than the current annual cost  
71 of administering the Title V program.



72 ( \* \* \*9) No such fees shall be utilized by the Department  
73 of Environmental Quality or any other person for any purpose or  
74 purposes other than those purposes required by Sections 49-17-1  
75 through 49-17-45, as they relate to the Title V program.

76 **SECTION 2.** Section 49-17-16, Mississippi Code of 1972, is  
77 amended as follows:

78 49-17-16. (1) (a) An Advisory Council, hereinafter  
79 referred to as "Advisory Council," is created to conduct an  
80 independent study of the costs for the development and  
81 administration of the Title V program within the Department of  
82 Environmental Quality and to conduct an annual review of the costs  
83 of administering such programs.

84 (b) The costs to be included within the study for the  
85 Title V program shall be those costs set forth in Section  
86 49-17-14. \* \* \* After completing a study of the program needs and  
87 costs, the Advisory Council shall recommend an equitable fee  
88 system for the Title V program. The annual review of the Title V  
89 program shall determine if the fee system is collecting sufficient  
90 funds to meet the program needs. The Advisory Council shall  
91 recommend an appropriate fee schedule for the upcoming fee year  
92 and, if necessary, recommend changes to the existing fee system so  
93 that sufficient funds are collected through an equitable fee  
94 system. Each annual review report shall be due January 1 of each  
95 year to the commission and the Executive Director of the  
96 Department of Environmental Quality.



97           (2) \* \* \* The Department of Environmental Quality shall  
98 assist the Advisory Council by providing any information the  
99 Advisory Council may require to perform its duties under Sections  
100 49-17-1 through 49-17-45.

101           (3) The Advisory Council shall be composed of the following  
102 seven (7) persons appointed as follows: three (3) representatives  
103 of \* \* \* industries that qualify for inclusion under the Title V  
104 program, that are required to pay the \* \* \* program fee \* \* \*,  
105 with one (1) such representative to be appointed by the Governor,  
106 one (1) by the Lieutenant Governor and one (1) by the Speaker of  
107 the House of Representatives; the Executive Director of the \* \* \*  
108 Mississippi Development Authority; the President of the  
109 Mississippi Manufacturers Association; the President of the  
110 Mississippi Farm Bureau Federation; and the Chairman of the  
111 Mississippi Small Business Compliance Advisory Panel.  
112 Nonappointed members of the Advisory Council may designate an  
113 alternate member to act in their stead in performing any function  
114 of the Advisory Council. The length of term for each member of  
115 the Advisory Council shall be four (4) years. Members of the  
116 Advisory Council may serve successive and multiple terms.

117           \* \* \*

118           (4) \* \* \* Vacancies on the Advisory Council shall be filled  
119 by appointment in the same manner as the original  
120 appointments. \* \* \*



121 (5) The Advisory Council shall select from their membership  
122 a chairperson to preside over meetings and a vice chairperson to  
123 preside in the absence of the chairperson or when the chairperson  
124 shall be excused. The Advisory Council shall adopt procedures  
125 governing the manner of conducting its business. A majority of  
126 the members shall constitute a quorum to do business.

127 (6) Members of the Advisory Council shall serve without  
128 salary. The members of the Advisory Council shall be entitled to  
129 receive reimbursement of their actual travel and hotel expenses as  
130 provided in Section 25-3-41, incurred while in the performance of  
131 their duties as members of the Advisory Council to be paid on an  
132 itemized statement approved by the State Fiscal Officer. Expenses  
133 shall be paid from fees collected in accordance with Section  
134 49-17-30.

135 (7) The Executive Director of the Department of  
136 Environmental Quality shall provide technical, clerical and other  
137 support services, including services by contract, as the Advisory  
138 Council determines that it requires in the performance of its  
139 functions.

140 **SECTION 3.** Section 49-17-30, Mississippi Code of 1972, is  
141 amended as follows:

142 49-17-30. (1) As a condition of \* \* \* Title V of the  
143 federal Clean Air Act, the owner or operator of any stationary  
144 source required to obtain an air operating permit under the Title



145 V program, hereinafter referred to as a "Title V permit," shall  
146 pay to the Department of Environmental Quality an annual fee.

147 (2) To facilitate the proper administration of the Title V  
148 program, the commission is authorized to assess and collect fees  
149 from \* \* \* any stationary source subject to the Title V program.  
150 The commission shall establish the amount of each fee to cover the  
151 costs of the Title V program as provided in Section 49-17-14. The  
152 commission is further authorized to promulgate such rules and  
153 regulations as are necessary for the development and  
154 administration of the Title V program and the assessment and  
155 collection of the Title V program fees.

156 \* \* \*

157 (3) (a) \* \* \* The fee schedule for Title V program fees  
158 shall be set annually by order of the commission in an amount  
159 sufficient to cover the reasonable costs of development and  
160 administration of the Title V program. The commission's order  
161 shall follow:

162 (i) Receipt of the report and recommendations of  
163 the Advisory Council, if timely received; and

164 (ii) A public hearing to be held not earlier than  
165 thirty (30) days following receipt by the commission of the report  
166 and recommendations of the Advisory Council. \* \* \*.

167 (b) \* \* \* The commission may proceed with entry of the  
168 order on fees if the Advisory Council fails to submit its report  
169 in a timely manner.



170           (c) The order of the commission may be appealed in the  
171 manner set forth in Section 49-17-41.

172           (d) The determination of the fee set by order of the  
173 commission shall not be considered the promulgation of a  
174 regulation by the commission.

175           (e) The record of the public hearing shall be included  
176 in the record upon which the order is based and shall become a  
177 part of the appellate records for all appeals taken from the order  
178 of the commission establishing or modifying Title V program fees.  
179 Any undisputed amount due from an appellant must be paid according  
180 to the appellant's payment schedule during the pendency of the  
181 appeal.

182           (4) Any person required to pay the Title V \* \* \* program fee  
183 set forth under this chapter who disagrees with the calculation or  
184 applicability of the person's fee may petition the commission in  
185 writing for a hearing in accordance with Section 49-17-35. Such  
186 hearing shall be in accordance with Section 49-17-33. Any  
187 disputed portion of the fee for which a hearing has been requested  
188 will not incur any penalty or interest from and after the receipt  
189 by the commission of the hearing petition. The decision of the  
190 commission may be appealed in the manner set forth in Section  
191 49-17-41.

192           (5) All fees collected pursuant to this section shall be  
193 deposited into the "Air Operating Permit Program Fee Trust Fund"  
194 established in Section 49-17-14.





195           **SECTION 4.** Section 49-17-32, Mississippi Code of 1972, is  
196 amended as follows:

197           49-17-32. (1) The commission may delegate to the Department  
198 of Environmental Quality the responsibility for the collection of  
199 the Title V program fees.

200           (2) \* \* \* The Title V program fee shall be due September 1  
201 of each year. Each owner or operator may elect a quarterly  
202 payment method of four (4) equal payments with the payments due  
203 September 1, December 1, March 1 and June 1. The owner or  
204 operator shall notify the Department of Environmental Quality that  
205 the quarterly payment method will be used by September 1.

206           (3) If any part of the \* \* \* Title V program fee imposed is  
207 not paid within thirty (30) days after the due date, a penalty of  
208 ten percent (10%) of the amount due shall at once accrue and be  
209 added thereto, unless the permittee demonstrates to the commission  
210 that the failure to make timely payment was unavoidable due to  
211 financial hardship or otherwise beyond the permittee's control.  
212 If the fee is not paid in full, including any penalty within sixty  
213 (60) days of the due date, the Environmental Quality Permit Board  
214 may revoke the permit upon proper notice and hearing as required  
215 by law. Any penalty collected under this section shall be  
216 deposited into the "Air Operating Permit Program Fee Trust Fund."

217           (4) Any owner or operator that fails to properly identify  
218 themselves subject to the Title V program may be subject to fees  
219 and penalties as determined by the commission.



220 ( \* \* \*5) It is the intent of the Legislature that fees  
221 collected pursuant to Sections 49-17-1 through 49-17-45 shall not  
222 supplant or reduce in any way the General Fund appropriation to  
223 the Department of Environmental Quality.

224 **SECTION 5.** This act shall take effect and be in force from  
225 and after July 1, 2018.

